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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/673,643	09/30/2003	Victor T. Massey	081589-0306133	1141
28410 7590 08/07/2007 BERENATO, WHITE & STAVISH, LLC 6550 ROCK SPRING DRIVE SUITE 240 BETHESDA, MD 20817			EXAMINER STRIMBU, GREGORY J	
			ART UNIT 3634	PAPER NUMBER
			MAIL DATE 08/07/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/673,643

Applicant(s)

MASSEY ET AL.

Examiner

Gregory J. Strimbu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 May 2007 and 17 January 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-46 is/are pending in the application.
- 4a) Of the above claim(s) 22-31 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21, 32-46 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application
- ☐ Other: _____.

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Election/Restrictions

Applicant's election with traverse of Group I in the reply filed on May 14, 2007 is acknowledged. The traversal is on the ground(s) that claim 40 has been amended to remove the recitation "a hardware component disposed in the wooden insert at the opening of the metallic frame". Therefore, said recitation can no longer be used as the basis for maintaining the restriction requirement. This is not found persuasive because the recitations of the interior flange and the exterior flange in the subcombination claim 42 are not required by the combination claim 23.

The requirement is still deemed proper and is therefore made FINAL.

Claims 22-31 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on May 14, 2007.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

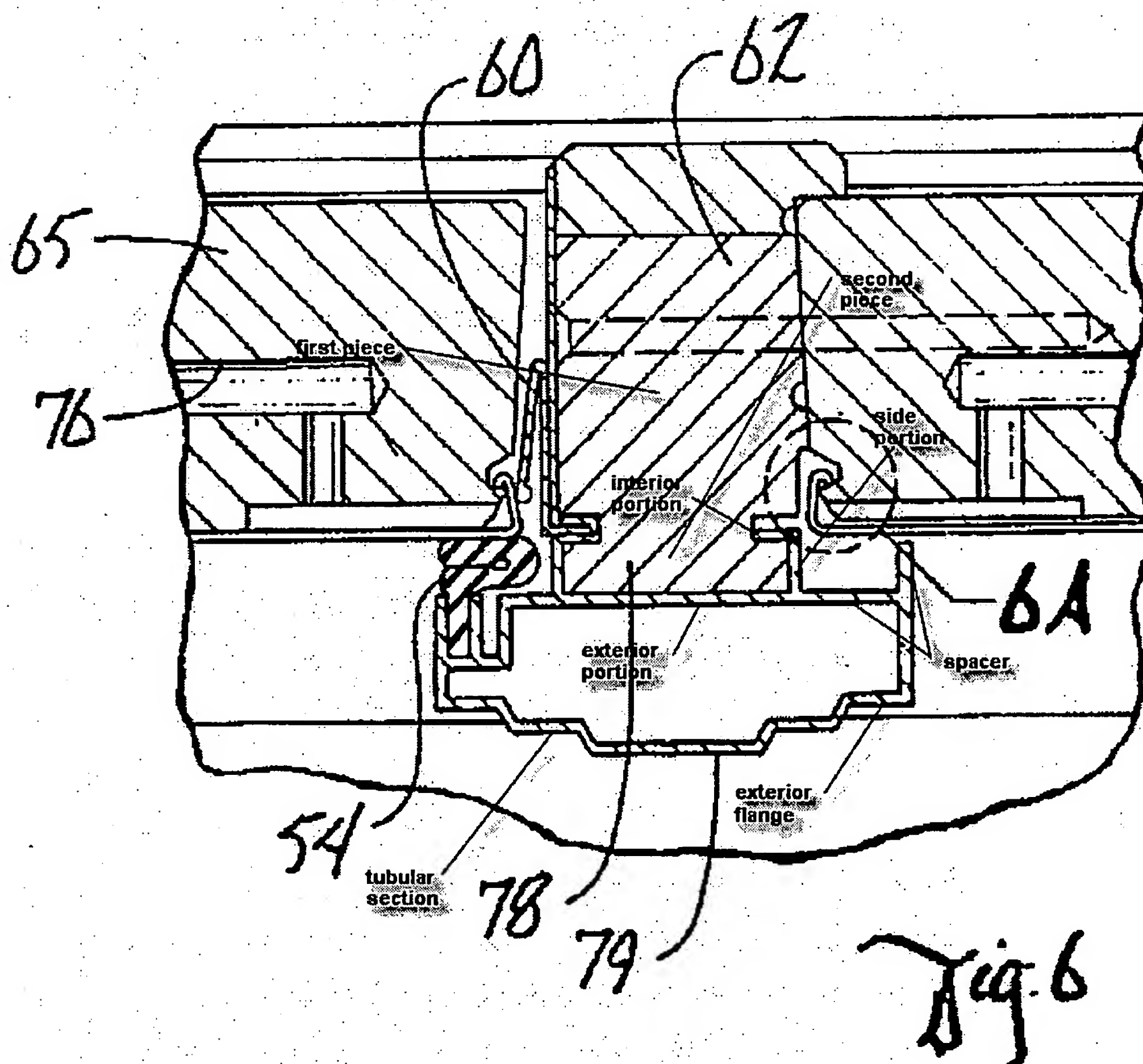
Claims 1-3, 5-8, 10-17, 20, 21 and 39 are rejected under 35 U.S.C. 102(b) as being anticipated by Hagemeyer et al. Hagemeyer et al. discloses an astragal assembly for attachment to a passive door having an interior surface, an exterior

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surface opposite to the interior surface, and an outer edge extending from the exterior surface to the interior surface, comprising: a metallic rail 79 having an exterior portion (labeled below), an interior portion (labeled below) spaced from and opposed to the exterior portion, and a side portion (labeled below) extending between the exterior portion and the interior portion and forming an angle with each of the exterior portion and the interior portion, and a spacer (labeled below) extending outwardly from the side portion away from the exterior portion and the interior portion of the metallic rail and having a distal end (not numbered, but shown at the end of the spacer) to maintain an air gap between a surface of the outer edge of the passive door and the side portion of the metallic rail when the astragal assembly is affixed thereto to allow air flow between the outer edge of the passive door and the side portion of the metallic rail, wherein an elongated open channel (not numbered, but shown in figure 6) is defined in the metallic rail with sides formed by the exterior portion and the interior portion and a base formed by the side portion, the elongated open channel having an opening extending between the exterior portion and the interior portion and opposed to the side portion; and a wooden insert 78 retained within the elongated open channel in the metallic rail, hardware (not numbered, but shown in figure 6 as the screw), the interior portion includes an interior flange that extends past the side portion, a stop (not numbered, but shown in figure 6 holding the gasket 54), a gasket 54, an exterior flange (labeled below), a door opening (labeled below), the exterior portion includes a hollow elongate tubular section (labeled below), the side portion includes a thermal break comprising the

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pocket of air between the side portion and the passive door, the wooden insert includes a first piece (labeled below) and a second piece (labeled below).

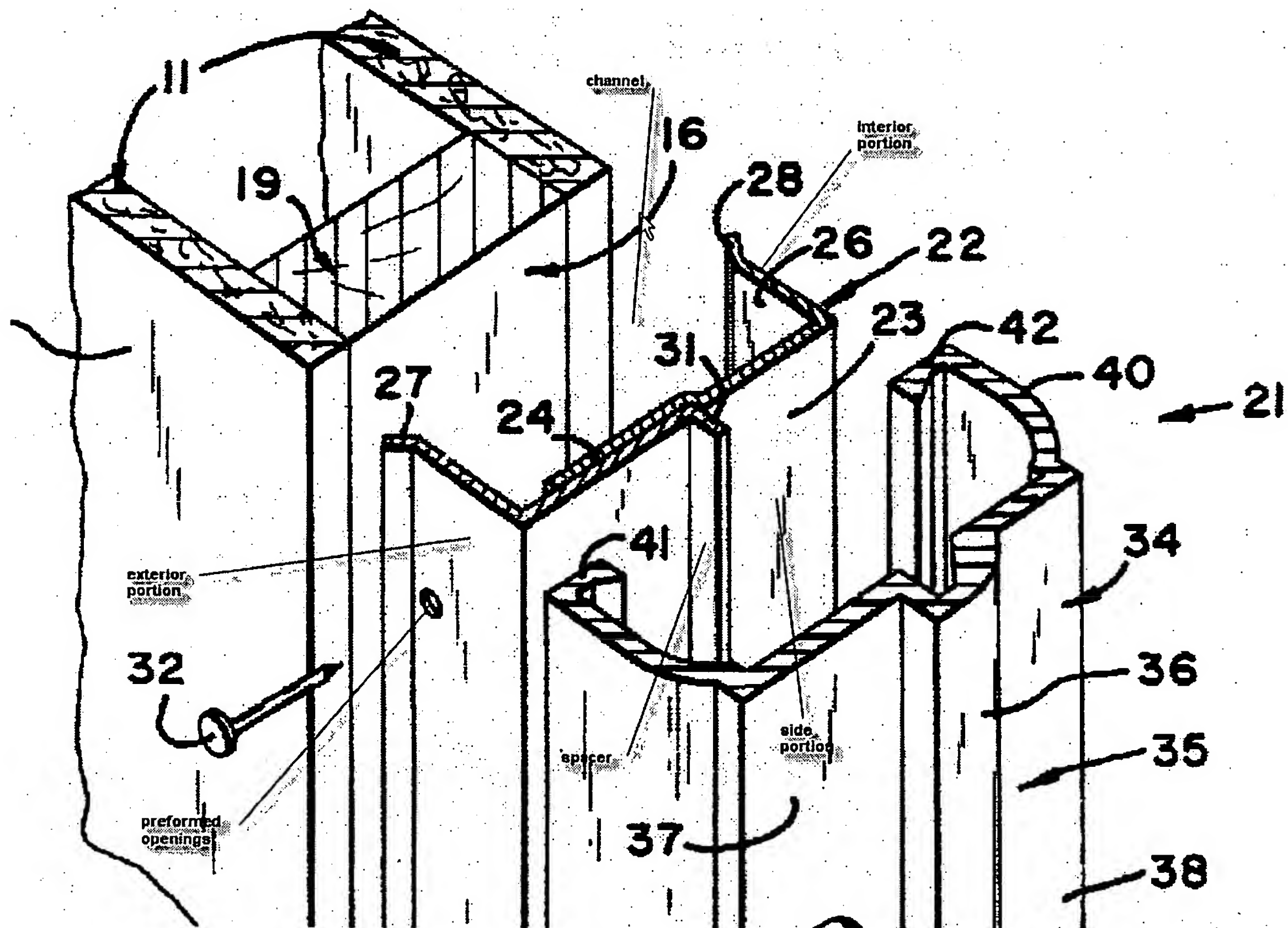


Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Wendt.

Wendt discloses an astragal assembly for attachment to a passive door, i.e., the door attached to the hinges 46, having an interior surface, an exterior surface opposite to the interior surface, and an outer edge extending from the exterior surface to the interior surface, comprising: a metallic rail 22 having an exterior portion (labeled below), an

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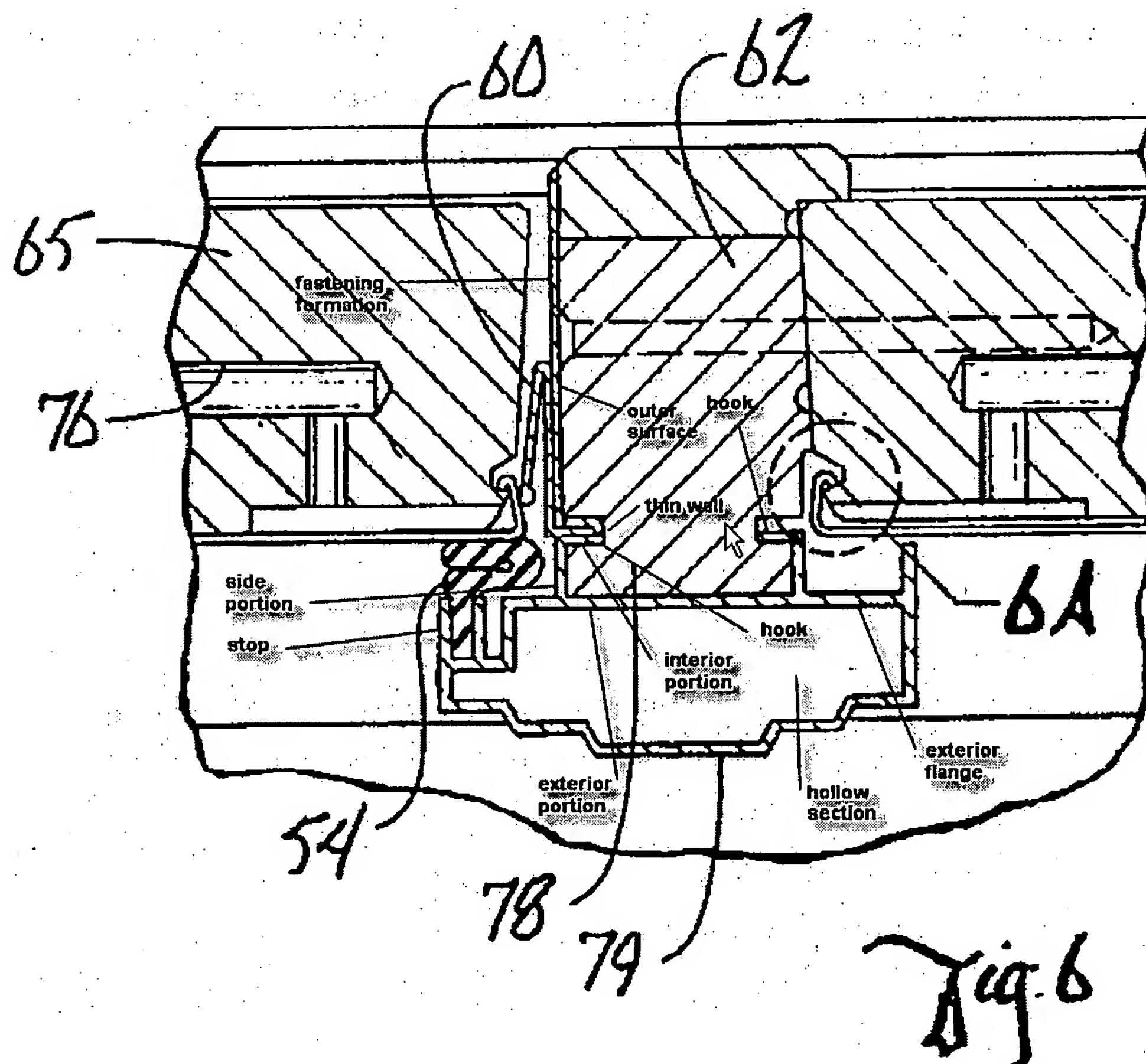
interior portion (labeled below) spaced from and opposed to the exterior portion, and a side portion (labeled below) extending between the exterior portion and the interior portion and forming an angle with each of the exterior portion and the interior portion, and a spacer (labeled below) extending outwardly from the side portion away from the exterior portion and the interior portion of the metallic rail and having a distal end (not numbered, but shown at the end of the spacer) to maintain an air gap between a surface of the outer edge of the passive door and the side portion of the metallic rail when the astragal assembly is affixed thereto to allow air flow between the outer edge of the passive door and the side portion of the metallic rail, wherein an elongated open channel (labeled below) is defined in the metallic rail with sides formed by the exterior portion and the interior portion and a base formed by the side portion, the elongated open channel having an opening extending between the exterior portion and the interior portion and opposed to the side portion; and a wooden insert 19 retained within the elongated open channel in the metallic rail, the exterior portion includes preformed openings (labeled below) to receive fasteners 32.



Claims 32-36 and 38 are rejected under 35 U.S.C. 102(b) as being anticipated by Hagemeyer et al. Hagemeyer et al. discloses an astragal comprising: an extruded aluminum rail 79 with an exterior portion (labeled below) having an exterior flange (labeled below) extending from a first side and a stop (labeled below) extending from a second side opposite to the first side, an interior portion (labeled below) spaced from and opposed to the exterior portion, and a side portion (labeled below) extending between the exterior portion and the interior portion having a fastening formation (labeled below), the side portion having a spacer 60 extending outwardly therefrom; and an insert member 78 retained substantially within a channel in the extruded aluminum

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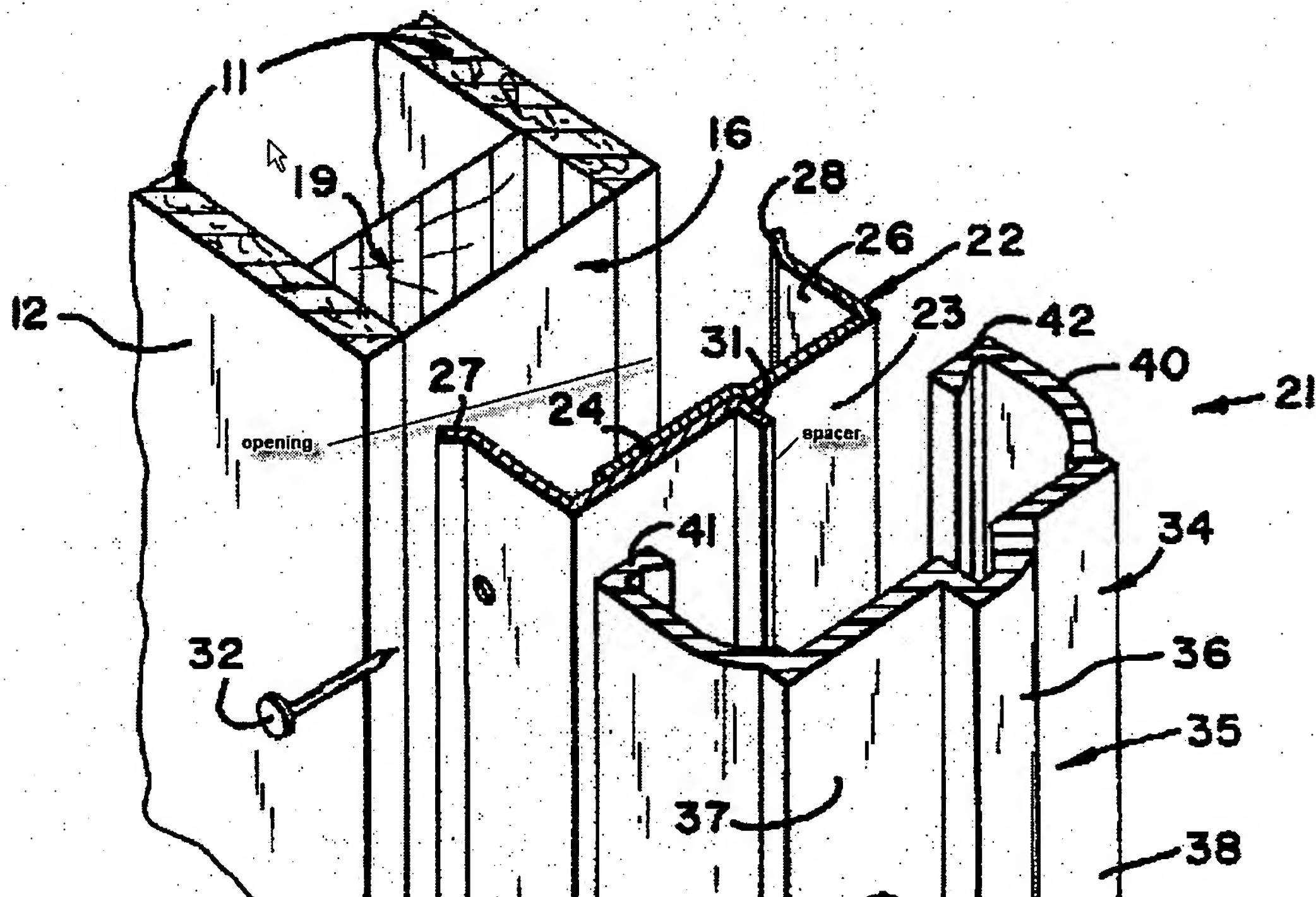
rail formed by the exterior portion, the interior portion and the side portion, wherein the insert presents an outer surface (labeled below) for attachment to hardware, and the spacer extends away from the channel, a hollow section (labeled below) and hook (labeled below), the interior portion includes a thin wall (labeled below) and a hook (labeled below) extending into the channel, the side portion includes a thermal break comprising the air pocket formed between the side portion and the seal.



Claims 40, 41 and 46 are rejected under 35 U.S.C. 102(b) as being anticipated by Wendt. Wendt discloses an astragal assembly for attachment to a passive door, i.e.,

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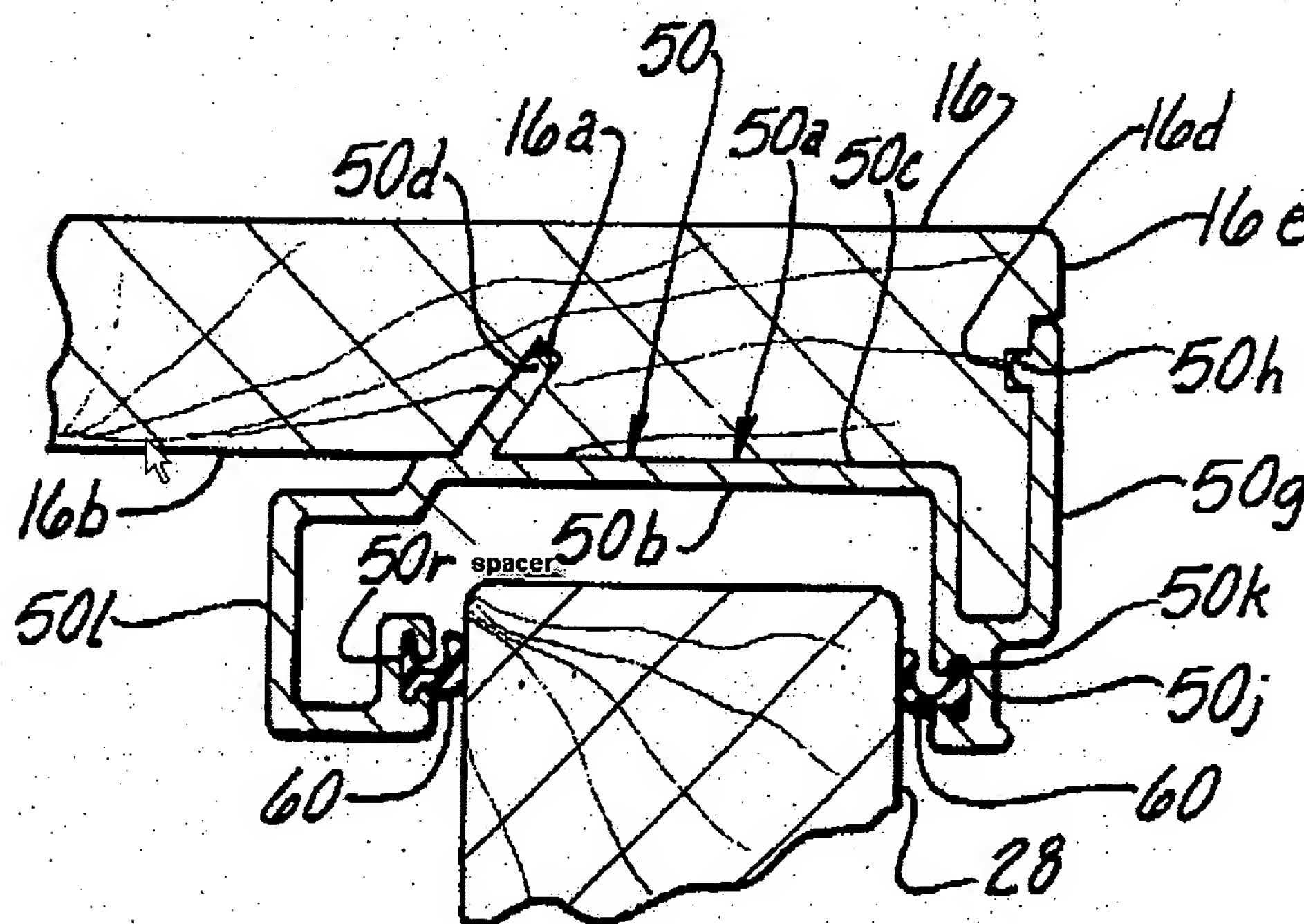
the door attached to the hinge 46, having an interior surface, an exterior surface opposite to the interior surface, and an outer edge extending between the exterior surface and the interior surface, the assembly comprising: a metallic frame 22 fixable to the exterior surface and the interior surface of the passive door, the metallic frame having an exterior portion 25 adjacent to the exterior surface of the passive door when the astragal assembly is affixed thereto, an interior portion 26 adjacent to the interior surface of the passive door when the astragal assembly is affixed thereto, and a side portion 23 extending between the exterior portion and the interior portion of the metallic frame and opposite to the outer edge of the passive door when the astragal assembly is affixed to the passive door, the interior portion, the exterior portion, and the side portion forming an opening (labeled below) in the metallic frame which faces away from the outer edge of the passive door; and a wooden insert 19 disposed in the metallic frame between the interior portion, the exterior portion, and the side portion thereof, a spacer (labeled below), a hardware component 32.



Claims 42-45 are rejected under 35 U.S.C. 102(b) as being anticipated by Clancy et al. Clancy et al. discloses an astragal assembly usable with an active door and a passive door having an exterior surface, an interior surface opposite to the exterior surface, and an outer end disposed between the exterior surface and the interior surface, the assembly comprising: a frame 48 including an interior portion 48d, an exterior portion 48g spaced apart from and opposed to the interior portion, a side portion 48b extending between the interior portion and the exterior portion opposite to the outer end of the passive door when the astragal assembly is attached thereto, an interior flange 48l extending from where the interior portion meets the side portion to engage the interior surface of the passive door when the astragal assembly is attached

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thereto, an exterior flange 48j extending from where the exterior portion meets the side portion to engage the exterior surface of the passive door when the astragal assembly is attached thereto, and a channel formed by the exterior portion, the interior portion, and the side portion of the frame; and an insert member 12 disposed in the channel and having a surface exposed to the active door when the astragal assembly is attached to the passive door, a spacer (labeled below), the insert member is wooden and the frame is metallic based on the cross sectional shading as shown in figure 3.



Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hagemeyer et al. as applied to claims 1-3, 5-8, 10-17, 20, 21 and 39 above, and further in view of Germano. Germano discloses an astragal comprising a multiple pieces of wood.

It would have been obvious to one of ordinary skill in the art to provide Hagemeyer et al., with a construction, as taught by Germano, to reduce the cost of manufacturing the assembly.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hagemeyer et al. as applied to claims 1-3, 5-8, 10-17, 20, 21 and 39 above, and further in view of Massey et al. Massey et al. discloses an astragal 19 including a strike plate 21.

It would have been obvious to one of ordinary skill in the art to provide Hagemeyer et al. with a strike plate, as taught by Massey et al., to be able to securely latch the door to the astragal.

Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wendt as applied to claim 1 above. Wendt is silent concerning the side portion including preformed openings.

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However, it would have been obvious to one of ordinary skill in the art to provide Wendt with preformed openings in the side portion for receiving fasteners since it has been held that the mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hagemeyer et al. as applied to claims 1-3, 5-8, 10-17, 20, 21 and 39 above, and further in view of Procton. Procton discloses an astragal assembly comprising hooks 21 and 22 for engaging a wooden insert 16.

It would have been obvious to one of ordinary skill in the art to provide Hagemeyer et al. with hooks, as taught by Procton, to better engage and retain the wooden insert.

Claim 37 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hagemeyer et al. as applied to claims 32-36 and 38 above, and further in view of Massey et al. Massey et al. discloses an astragal 19 including a strike plate 21.

It would have been obvious to one of ordinary skill in the art to provide Hagemeyer et al. with a strike plate, as taught by Massey et al., to be able to securely latch the door to the astragal.

Response to Arguments

Applicant's arguments filed January 17, 2007 have been fully considered but they are not persuasive.

It should first be noted that the pending claims only recite the combination of an astragal assembly. Therefore, a reference anticipates the claimed invention if it can be used as intended by the applicant, i.e., between a passive and active door.

With respect to the applicant's comments regarding Hagemeyer et al. and claim 1, the examiner respectfully disagrees. Hagemeyer et al. anticipates the applicant's claimed invention since it is capable of being used as the applicant desires to use the instant invention. Moreover, Hagemeyer et al. discloses a spacer (labeled above) which extends outwardly, i.e., to the right in figure 6, from the side portion (labeled above). The spacer maintains an air gap between the outer edge of the passive door and the side portion since the spacer defines a column of air between the edge of the passive door and the side portion. The applicant's comments concerning the spacer contacting the passive door are not persuasive because they are not supported by the claim language.

With respect to the applicant's comments concerning Hagemeyer et al. and claim 32, the examiner respectfully disagrees. As shown in figure 6 of Hagemeyer et al., the insert member 78 is substantially retained within the cladding. Claim 32 only requires the retaining to occur substantially within the cladding rather than the disposition of the insert member. In other words, the insert member only need be substantially retained within the cladding rather than substantially disposed within the cladding.

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With respect to the applicant's comments concerning Wendt, the examiner respectfully disagrees. Claim 1 does not require a passive door. Rather, claim 1 only requires an astragal which is capable of working with a passive door. Accordingly, Wendt anticipates claim 1 since it is clearly capable of being used with a passive door, i.e., the door which is attached to the hinges 46. Moreover, Wendt discloses a spacer (labeled above) which maintains an air gap between the side portion and the passive door. See figure 2 which shows an air gap between the spacer and the jamb member 34. Therefore, when the passive door is attached to the jamb, the air gap would be between the passive door and the side portion.

The applicant's comments concerning Procton are moot since Procton has not been applied in a rejection of claims 23, 25-29 and 31.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

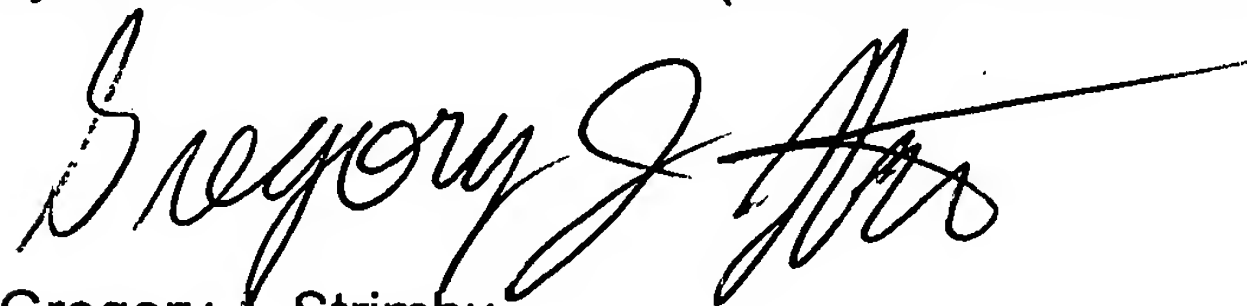
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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory J. Strimbu whose telephone number is 571-272-6836. The examiner can normally be reached on Monday through Friday 8:00 to 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Glessner can be reached on 571-272-6843. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Gregory J. Strimbu
Primary Examiner
Art Unit 3634
August 3, 2007